

Appl. No. 09/832,464

Amtd. dated: February 26, 2004

Reply to Office Action of September 26, 2003

REMARKS

Claims 1-31 are in the application. Claims 1-31 are rejected. By the present amendment, claim 28 is amended. Support for the amendment is found on column 2 lines 31-33 and 46-50; column 4, lines 51-52; and column 5, lines 33-36. The amendments add no new matter.

In view of the amendments and following remarks, reconsideration of claims 1-31 is respectfully requested.

Oath/Declaration

The Patent Office has objected to the declaration that was filed with the above-described application as being defective. In response, applicants are submitting herewith new Reissue Declarations Under 37 C.F.R. § 1.175 signed by the inventors David H. GORSKI and Kenneth WALSH. The attached Declarations state a) that the persons signing believe that they are the original and first inventors of the subject matter which is claimed, b) that the persons signing acknowledge their duty to disclose all information that is material to the examination of the reissue application, and c) that all errors being corrected in the reissue application up to the time of filing of the oath and declaration arose without deceptive intention on their (i.e., the applicants) part. Applicants submit that the attached Declarations comply with 37 CFR § 1.175.

§112 Rejections

Claim 28 is rejected under 35 USC § 112, second paragraph, as failing to comply with the written description requirement.

Applicants have amended claim 28 for clarity to depend from claim 1 and to indicate that the claimed DNA molecule comprises a homeobox which comprises nucleotide 749 to nucleotide 931 of SEQ ID NO:1. As stated both in the Summary of the Invention and the Detailed Description of the Invention, one of applicants' inventions is a "novel homeobox gene". (See column 2, lines 31-33 and column 4, lines 51-52 of the patent.) As shown in Figure 1 and described in the legend to Figure 1, the homeobox portion of the claimed Gax "gene" comprises nucleotide 749 to nucleotide 931 of SEQ ID NO:1. Given the language in the specification, one of ordinary skill in the art would appreciate not only that applicants were in possession of the

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DNA molecule recited in claim 28 as amended, but also that applicants contemplated claiming such molecule. Thus, claim 28, as amended meets the written description requirement of §112. Accordingly, applicants submit that the rejection of claim 28, as amended, should be withdrawn.

In view of the amendments and remarks Applicants submit that claims 1-31 are now in condition for allowance. Prompt notification of such allowance is respectfully requested. Please note that this amendment is being filed by the original attorney of record. Please send all future correspondence to the address associated with Customer Number 24024, namely

Calfee, Halter & Griswold
1400 McDonald Investment Center
800 Superior Avenue
Cleveland, Ohio 44114

Respectfully submitted,

Date: February 26, 2004

Pamela A. Docherty
Pamela A. Docherty – Reg. No. 40,591
(216) 622-8416